

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ABC BUS LEASING, INC., a Florida
corporation,

Case No. 06-CV-4819 (PJS/RLE)

Plaintiff,

v.

TRAVELING IN STYLE (TIS) INC., a New
York corporation; JOSEPH MCMILLIAN;
ALBERTHA CORNEILLE; R.V. WILLIAMS
JACKSON; JASPER LOWRY; ROGER
MCMILLIAN; MARIE BLANCHARD-
GREEN; and DOROTHY JONES
DAVENPORT,

ORDER

Defendants.

TRAVELING IN STYLE (TIS) INC., a New
York corporation,

Third-Party Plaintiff,

v.

FRANK SORVINO and ABC BUS, INC., a
Missouri corporation,

Third-Party Defendants.

George R. Serdar, Kristy A. Saum, and Joseph W. Lawver, MESSERLI &
KRAMER PA, for ABC Bus Leasing, Inc.

Gregory M. Miller, Earl H. Cohen, and Brian N. Niemczyk, MANSFIELD TANICK &
COHEN, PA, for Traveling In Style (TIS), Inc.

Mark A. Solheim and Angela Beranek Brandt, LARSON KING, LLP, for ABC
Bus, Inc.

This matter is before the Court on two motions: the motion of third-party defendants ABC Bus, Inc. and Frank Sorvino to dismiss for lack of prosecution and the motion of plaintiff ABC Bus Leasing, Inc. to lift the stay of this case. For the reasons stated on the record at the September 24, 2008 hearing, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to set aside stay of proceedings [Docket No. 79] is DENIED. The Court will maintain the stay in place until the arbitration proceedings have concluded, as discovery and motions practice may prove to be unnecessary — in whole or in part — after the arbitration is concluded.
2. Third-party defendants' motion to dismiss for lack of prosecution [Docket No. 75] is DENIED.
3. Third-party defendants' informal request to order mediation is DENIED. The Court encourages the parties to mediate, as they agreed to do. But because third-party defendants did not raise this issue a year ago when they moved to compel arbitration, and because third-party defendants have now raised this issue for the first time in their reply brief, any right that third-party defendants may have had to compel mediation has been waived. Third-party plaintiff and third-party defendants were unconditionally ordered to arbitrate certain claims on September 18, 2007, and that arbitration shall proceed forthwith. At this point, any party who refuses to arbitrate is acting in contempt of court.

4. Pursuant to the stipulation of the parties made on the record at the hearing, the arbitration shall include all of third-party plaintiff's claims against ABC Bus, Inc., including those relating to Bus 575.

Dated: September 24, 2008

s/Patrick J. Schiltz

Patrick J. Schiltz
United States District Judge